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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/478,071	01/03/2000	LEE ROY COPELAND	511-003	1167
39602	7590	08/08/2005	EXAMINER	
NOBLITT & GILMORE, LLC. 4800 NORTH SCOTTSDALE ROAD SUITE 6000 SCOTTSDALE, AZ 85251			LEVY, NEIL S	
			ART UNIT	PAPER NUMBER
			1615	

DATE MAILED: 08/08/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/478,071

Applicant(s)

COPELAND ET AL

Examiner

NEIL LEVY

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 11 November 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-47 is/are pending in the application.
- 4a) Of the above claim(s) 14-21 and 35-47 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-13 and 22-34 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

Claims 14-21 and 35-47 stand withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected inventions and species, there being no allowable generic or linking claim. Applicant timely traversed the restriction (election) requirement in the reply filed on paper # 7.

Rejections not maintained are withdrawn, in view of T.D., amendment and arguments of 11/11/04.

Claims 1-13, 22-34 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Koulbanis et al 4324802.

See example 3: unsaponifiables of the instant Jojoba oil (example A) inherently at least 6% prior to hydrolysis, of example A (col.4) are mixed with polar hydrophilic salts from saponifiable fraction-glycerol stearate. No patentable weight is given to how the salts or unsaponifiables are arrived at in the claim to the composition intended for topical use. Koulbanis shows topical use, and the unspecified in instant claim. Polar salts with nonpolar unsaponifiables, of those of the instant organic materials, including Jojoba oil. The original organic materials were pretreated, as the various oils were at least extracted - or refined- from the Jojoba. The compositions contain as high as 40% nonsaponifiables, as in instant claims 4, 5, with sun block (example 1) or the substantive compositions-substantive not further quantified in claims 6-13. These compositions are immediately envisioned as providing substantive, again, unquantified, benefits-sunprotection. Applicants' arguments of 11/11/04 are to the making of the compositions, but these features are not demonstrated by applicant as critical, unobvious or superior to the compositions per se, as shown by Koulbanis.

Claims 1-13, 22-34 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Moy-5928659.

10% unsaponifiables (UFA) with polar hydrophilic salts, lanolin soaps (col.6, lines 27-44) or example 4; 8% UFA with glycerolstearate are disclosed. These are the instant compositions, based, again, on the instant organic avocado seed oil, thus inherently of the instant properties. The benefits here amelioration of keratoses, while added metal chelates provide healing (col.8, lines 6-16).

Claims 1-3, 6, 7, 10-13, 22-24, 27, 28, 31-34 are rejected under 35 U.S.C. 102(b) as being anticipated by Dreger-2240365.

Tall oil, originally containing 8 or 10% unsapouifiables (p.2, table), is mixed with polar hydrophilic salts of sodium soaps (p.6, col.1, lines 43-54), added components include wool fat, cotton seed, soybean, coconut, and tallow oils (bottom, p.6, left column), thus obviously inclusive of higher carbon fatty acids saponifiables as of instant claim 22. The compositions are beneficial-improved (p.6, column 2, bottom) and are for topical application. Various treatments are performed prior to adding the suitable agents comprised of unsaponifiables (p.6, col.1, bottom). These include refinement – decantation and filtration, oxidation, concentration (p.3).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Neil Levy whose telephone number is 571-272-0619. The examiner can normally be reached on Tuesday- Friday 7:00 am to 5:30 pm.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thurman Page can be reached on 571-272-0602. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Levy/tgd  
August 4, 2005



NEIL S. LEVY  
PRIMARY EXAMINER